

Enabling Declaration Establishing a Plan for Condominium Ownership

WHEREAS, The Kohl corporation, a Wisconsin corporation (hereinafter referred to as "Grantor"), owned certain real property herein described, and

WHEREAS, said Grantor has improved said property by constructing thereon 176 units in 22 multifamily buildings known as East Bluff Townhouses, said buildings having been constructed in accordance with plans and specifications prepared by Jordan Miller and George Waltz and Associates, said plans being filed in the Office of the Building Inspector of the City of Madison, Wisconsin, and entitled "East Bluff Apartments – Northport Drive, Troy Drive, Sherman Ave. – Madison, Wisc." And consist of sheet Nos. 1 through 13, inclusive, S-1, S-2, P-1, P-2, P-3, H-1, E-1, E-2, E-3 and U-1; and

WHEREAS, said Grantor hereby establishes by this declaration a plan for the individual ownership of the real property estates consisting of the area of space contained in each of the units in said multifamily buildings and the co-ownership by the individual and separate owners thereof, as tenants in common, of all of the remaining real property which is hereinafter defined and referred to herein as the "common areas and facilities."

NOW, THEREFORE, said Grantor, the fee owner of the following described real property, to wit:

A parcel of land located in the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 36, Township 8 North, Range 9 East, in the City of Madison, described as follows: Commencing at the Northeast corner of said Section 36; thence North $89^{\circ} 30' 01''$ West 33.0 feet; thence South $00^{\circ} 26' 40''$ West 33.0 feet; thence North $89^{\circ} 30' 01''$ West 434.53 feet to the point of beginning; thence South $00^{\circ} 29' 59''$ West 335.0 feet; thence South $89^{\circ} 30' 01''$ East 80.0 feet; thence South $00^{\circ} 29' 59''$ West 394.96 feet; thence North $59^{\circ} 08' 12''$ West 472.86 feet; thence North $00^{\circ} 29' 59''$ East 490.93 feet; thence South $89^{\circ} 30' 01''$ East 328.0 feet to the point of beginning; and

A parcel of land located in the Northeast $\frac{1}{4}$ of the Northeast $\frac{1}{4}$ of Section 36, Township 8 North, Range 9 East, in the City of Madison, described as follows: Commencing at the Northeast corner of said Section 36; thence North $89^{\circ} 30' 01''$ West 33.0 feet; thence South $00^{\circ} 26' 40''$ West 33.0 feet to the point of beginning, thence continuing South $00^{\circ} 26' 40''$ West 549.79 feet; thence South $04^{\circ} 26' 07''$ West 129.31 feet; thence South $00^{\circ} 26' 40''$ West 157.70 feet; thence North $89^{\circ} 33' 20''$ West 43.46 feet; thence South $30^{\circ} 51' 48''$ West 61.14 feet; thence North $59^{\circ} 08' 12''$ West 315.21 feet; thence North $00^{\circ} 29' 59''$ East 391.96 feet; thence North $89^{\circ} 30' 01''$ West 80.0 feet; thence North $00^{\circ} 29' 59''$ East 335.0 feet; thence South $89^{\circ} 30' 01''$ East 434.53 feet to the point of beginning.

hereby makes the following declaration as to dividends, covenants, restrictions, limitations, conditions and uses to which the above described real property and improvements thereon, consisting of 176 units in 22 multifamily buildings and appurtenances, may be put, hereby specifying that said declaration shall constitute covenants to run with the land and shall be binding on said Grantor, its successors and assigns, and all subsequent owners of all or any part of said real property and improvements, together with their grantees, successors, heirs, executors, administrators, devisees or assigns:

A. Said Grantor, in order to establish a plan of condominium ownership for the above-described property and improvements, hereby covenants and agrees that it hereby divides said real property into the following separate freehold estates:

1. The 176 separately designated and legally described freehold estates consisting of the spaces or areas, being the area or space contained in the perimeter walls of each of the 176 units in said 22 multifamily buildings constructed on said property, said spaces being defined, and referred to herein, as "unit spaces".

2. A freehold estate consisting of the remaining portion of the real property is described and referred to herein as the "common areas and facilities" which definition includes the 22 multifamily buildings and the property upon which they are located, and specifically includes, but is not limited to, the land, roof, main walls, parking spaces, community facilities, trees, pavements, pipes, wires, conduits, and other public utility lines.

B. For the purpose of this declaration, the ownership of each "unit space" shall include the respective undivided interest in the common areas and facilities specified and established in "E" hereof, and each "unit space" together with the undivided interest is defined and hereinafter referred to as "family unit."

C. A portion of the "common areas and facilities" is hereby set aside and allocated for the restricted use of the respective "unit spaces," as hereinafter designated, and as shown on survey attached hereto, and said areas shall be known as "restricted common areas and facilities."

D. Each of the 22 multifamily buildings is two stories in height with a basement and is of wood frame construction and contains eight unit spaces or a total of 176 unit spaces. The 176 individual "unit spaces" hereby established and which shall be individually conveyed are described as Unit Space No. 201 through 236, 301 through 308, 310 through 349, 401 through 448 and 501 through 544. Each of the unit spaces is designed for and shall be used as residential housing.

Each of the following unit spaces has approximately 998 square feet plus a basement and contain a living room, dining room, kitchen, three bedrooms and one and one-half bathrooms:

Unit Space Nos. 201, 204, 205, 208, 209, 212, 213, 216, 217, 220, 221, 224, 225, 228, 229, 232, 233, 236, 301, 304, 305, 308, 310, 313, 314, 317, 318, 321, 322, 325, 326, 329, 330, 333, 334, 337, 338, 341, 342, 345, 346, 349, 401, 404, 405, 408, 409, 412, 413, 416, 417, 420, 421, 424, 425, 428, 429, 432, 433, 436, 437, 440, 441, 444, 445, 448, 501, 504, 505, 508, 509, 512, 513, 516, 517, 520, 521, 524, 525, 528, 529, 532, 533, 536, 537, 540, 541, and 544.

Each of the following unit spaces has approximately 876 square feet plus a basement and contains a living room, dining room, kitchen, two bedrooms and one and one-half bathrooms:

Unit Space Nos. 202, 203, 206, 207, 210, 211, 214, 215, 218, 219, 222, 223, 226, 227, 230, 231, 234, 302, 303, 306, 307, 311, 312, 315, 316, 319, 320, 323, 324, 327, 328, 331, 332, 335, 336, 339, 340, 343, 344, 347, 348, 402, 403, 406, 407, 410, 411, 414, 415, 418, 419, 422, 423, 426, 427, 430, 431, 434, 435, 438, 439, 442, 443, 446, 447, 502, 503, 506, 507, 510, 511, 514, 515, 518, 519, 522, 523, 526, 527, 530, 531, 534, 535, 538, 539, 542, and 543

E. The undivided interest in the "common areas and facilities" hereby established and which shall be conveyed with respective "unit space" is as follows:

The percentage of undivided interest for each of the following unit spaces is .6005%

Unit Space Nos. 201, 204, 205, 208, 209, 212, 213, 216, 217, 220, 221, 224, 225, 228, 229, 232, 233, 236, 301, 304, 305, 308, 310, 313, 314, 317, 318, 321, 322, 325, 326, 329, 330, 333, 334, 337, 338, 341, 342, 345, 346, 349, 401, 404, 405, 408, 409, 412, 413, 416, 417, 420, 421, 424, 425, 428, 429, 432, 433, 436, 437, 440, 441, 444, 445, 448, 501, 504, 505, 508, 509, 512, 513, 516, 517, 520, 521, 524, 525, 528, 529, 532, 533, 536, 537, 540, 541, and 544.

The percentage of undivided interest for each of the following unit spaces is .5358%

Unit Space Nos. 202, 203, 206, 207, 210, 211, 214, 215, 218, 219, 222, 223, 226, 227, 230, 231, 234, 302, 303, 306, 307, 311, 312, 315, 316, 319, 320, 323, 324, 327, 328, 331, 332, 335, 336, 339, 340, 343, 344, 347, 348, 402, 403, 406, 407, 410, 411, 414, 415, 418, 419, 422, 423, 426, 427, 430, 431, 434, 435, 438, 439, 442, 443, 446, 447, 502, 503, 506, 507, 510, 511, 514, 515, 518, 519, 522, 523, 526, 527, 530, 531, 534, 535, 538, 539, 542, and 543

The respective undivided interests established and to be conveyed with the respective "unit spaces" as indicated above cannot be changed, and said Grantor, its successors and assigns, and grantees, covenant and agree that the undivided interests in the "common areas and facilities" and the fee titles to the respective "unit spaces" conveyed therewith, shall not be separated or separately conveyed, and each said undivided interest shall be deemed to be conveyed or encumbered with its respective "unit space" even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the "unit space".

F. The proportionate shares of the separate owners of the respective "family units" in the profits and common expenses in the "common areas and facilities", as well as their proportionate representation for voting purposes in the Association of Owners, is based on the proportionate value that each of the "family units," referred to herein, bears to the value of \$3,322,000.00, which represents the total value of all of the "family units." The value of the respective "family units," their respective interests for voting purposes, and their proportionate shares in the common profits and expenses shall be as follows:

The value of each of the following family units is \$19,950.00 and the proportionate representation for voting and share in common profits and expenses is $19,950/3,322,000$

Unit Nos. 201, 204, 205, 208, 209, 212, 213, 216, 217, 220, 221, 224, 225, 228, 229, 232, 233, 236, 301, 304, 305, 308, 310, 313, 314, 317, 318, 321, 322, 325, 326, 329, 330, 333, 334, 337, 338, 341, 342, 345, 346, 349, 401, 404, 405, 408, 409, 412, 413, 416, 417, 420, 421, 424, 425, 428, 429, 432, 433, 436, 437, 440, 441, 444, 445, 448, 501, 504, 505, 508, 509, 512, 513, 516, 517, 520, 521, 524, 525, 528, 529, 532, 533, 536, 537, 540, 541, and 544.

The value of each of the following family units is \$17,800.00 and the proportionate representation for voting and share in common profits and expenses is $17,800/3,322,000$

Unit Nos. 202, 203, 206, 207, 210, 211, 214, 215, 218, 219, 222, 223, 226, 227, 230, 231, 234, 302, 303, 306, 307, 311, 312, 315, 316, 319, 320, 323, 324, 327, 328, 331, 332, 335, 336, 339, 340, 343, 344, 347, 348, 402, 403, 406, 407, 410, 411, 414, 415, 418, 419, 422, 423, 426, 427, 430, 431, 434, 435, 438, 439, 442,

443, 446, 447, 502, 503, 506, 507, 510, 511, 514, 515, 518, 519, 522, 523, 526, 527, 530, 530, 534, 535, 538, 539, 542, and 543

G. The "restricted common areas and facilities" allocated for the restricted uses of the respective "family units" is as follows:

Fenced in yard area immediately adjacent to the entrance of each unit space.

H. Attached hereto and made a part hereof as Exhibit "A" is a drawing consisting of one sheet as prepared by Jordan Miller and George Waltz and Associates, dated September 2, 1970. The location of each unit space, the common areas and facilities, and the restricted common areas and facilities, and the restricted common areas and facilities are shown on said Exhibit "A".

I. Said Grantor, its successors and assigns, by this declaration, and all future owners of the "family units," by their acceptance of their deeds, covenant and agree as follows:

1. That the "common areas and facilities" shall remain undivided; and no owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the condominium.

2. That the "unit spaces" shall be occupied and used by the respective owners only as a private dwelling for the owner, his family, tenants and social guests and for no other purpose.

3. The owner of the respective "unit spaces" shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding his respective "unit space," nor shall said owner be deemed to own pipes, wires, conduits or other public utility lines running through said respective "unit spaces" which are utilized for, or serve more than one "unit space," except as tenants in common with the other "family unit" owners as heretofore provided in "E". Said owner, however, shall be deemed to own the walls and partitions which are contained in said owner's respective "unit space," and also shall be deemed to own the inner decorated and/or finished surfaces of the perimeter walls, floors and ceilings, including plaster, paint, wallpaper, etc.

4. The owners of the respective "unit spaces" agree that if any portion of the "common areas and facilities" encroaches upon the "unit spaces", a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. In the event a multifamily building is partially or totally destroyed, and then rebuilt, the owners of "unit spaces" in said building agree that minor encroachment of parts of the "common areas and facilities" due to construction shall be permitted and that valid easement for said encroachment and the maintenance thereof shall exist.

5. That an owner of a "family unit" shall automatically, upon becoming the owner of a "family unit or units," be a member of East Bluff Owners Association, hereinafter referred to as the "Association," and shall remain a member of said Association until such time as his ownership ceases for any reason, at which time his membership in said Association shall automatically cease.

6. That the owners of "family units" covenant and agree that the administration of the condominium shall be in accordance with the provisions of this Declaration, the By-Laws of the Association which are made a part hereof and attached as Exhibit "B", and shall be subject to the terms of a Regulatory Agreement executed by the Association and the Commissioner of the Federal Housing Administration, which Agreement is made a part hereof and is attached as Exhibit "C".

7. That each owner, tenant or occupant of a "family unit" shall comply with the provisions of this Declaration, the By-Laws, decisions and resolutions of the Association or its representative, and the Regulatory Agreement, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due, for damages or for injunctive relief.

8. That this Declaration shall not be revoked or any of the provisions herein amended unless all of the owners and the mortgagees of all of the mortgages covering the "family units" unanimously agree to such revocation or Amendment by duly recorded instruments.

9. That no owner of a "family unit" may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by the abandonment of his "family unit".

J. All sums assessed by the Association but unpaid for the share of the common expenses chargeable to any family unit shall constitute a lien on such family unit prior to all other liens except only (1) liens of general and special taxes, (2) all sums unpaid on a first mortgage recorded prior to the making of such assessment, and (3) mechanics' liens filed prior to the making of such assessment. Such lien may be foreclosed by suit by the manager or Board of Directors, acting on behalf of the owners of the family units, in like manner as a mortgage of real property. In any such foreclosure the family unit owner shall be required to pay a reasonable rental for the family unit, if so provided in the by-laws, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The manager or Board of Directors, acting on behalf of the owners of the family units, shall have power, unless prohibited herein, to bid in the unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

K. Where the holder of a first mortgage of record or other purchaser of a family unit obtains title to the unit as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such family unit which became due prior to the acquisition of title to such family unit by such acquires. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the owners of the family units excluding such acquires, his successors and assigns.

L. The respective "family units" shall not be rented by the owners thereof for transient or hotel purposes, which shall be defined as (a) rental for any period less than thirty (30) days; or (b) any rental if the occupants of the "family unit" are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen, and bellboy service. Other than the foregoing obligations, the owners of the respective "family units" shall have the absolute right to lease same provided that said lease is made subject to the covenants and restrictions contained in this Declaration and further subject to the By-Laws and Regulatory Agreement attached hereto.

M. Reconstruction or repair in the event of fire, casualty or disaster shall be in accordance with the following:

1. In the event of fire, casualty or any other disaster, the Insurance proceeds, if sufficient to reconstruct or repair the buildings, shall be applied to such reconstruction or repair. Reconstruction or repair as used herein shall mean restoring the buildings to substantially the same condition in which they existed prior to the fire, casualty or other disaster. Such reconstruction or repair shall be accomplished by the Board of Directors of the Association.

2. If the Insurance proceeds are insufficient to reconstruct or repair the buildings but are equal to at least ninety percent (90%) of the cost of said reconstruction and repair, then the buildings shall be reconstructed or repaired by the Board of Directors of the Association using the Insurance proceeds, and the owners shall be assessed for the deficiency.

3. If the Insurance proceeds are less than ninety percent (90%) of the cost to reconstruct or repair the buildings, then the determination as to whether or not to reconstruct or repair the buildings shall be

made by a vote taken of the members of the Association within ninety (90) days from the date of the fire, casualty or disaster. An affirmative vote of at least seventy-five percent (75%) of the total number eligible to vote shall be required in order to reconstruct or repair the buildings, and such decision shall also provide that the members shall be assessed for the deficiency. If the required number of members do not vote in favor of reconstruction or repair within said ninety (90) day period, then the provisions of Section 230.95, Wisconsin Statutes 1967, shall apply.

4. Notwithstanding all of the foregoing, in the event seventy-five percent (75%) or more of the buildings are destroyed or substantially damaged, then the determination as to whether or not to reconstruct or repair the buildings shall be made by a vote taken of the members of the Association within ninety (90) days from the date of the fire, casualty or disaster. An affirmative vote of at least seventy-five percent (75%) of the total number eligible to vote shall be required in order to reconstruct or repair the buildings. If the required number of members do not vote in favor of reconstruction or repair within said ninety (90) day period, then the provisions of Section 230-95, Wisconsin Statutes 1967, shall apply.

N. In a voluntary conveyance of a family unit the grantee of the unit shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the manager or Board of Directors of the Association, as the case may be, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the family unit conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount therein set forth.

O. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Wisconsin Unit Ownership Act (Sections 230.70 to 230.97, Wisconsin Statutes), this Declaration or in the by-Laws, shall be deemed to be binding on all owners of family units, their successors and assigns.

P. The Board of Directors of the Association shall obtain and continue in effect insurance coverage on the buildings upon the property in an amount equal to the maximum insurable replacement value, which amount shall be reviewed annually by the Board of Directors, affording protection against loss or damage by fire and such hazards covered by a standard extended coverage endorsement and such other risks or hazards as from time to time shall be customarily covered with respect to buildings similar in construction, location and use. Said insurance shall be for the benefit of the Association and the owners and their mortgagees as their interests may appear; provided, however, all proceeds payable by reason of said insurance shall be paid to the Association as trustee for the owners and their mortgagees for the express purpose of reconstruction and repair as provided in Paragraph M hereof, or, if it is determined in the manner as provided in Paragraph M hereof that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be applied as provided in Paragraph M hereof the foregoing provisions of this paragraph are without prejudice to the right of any owner to obtain individual unit insurance; provided, however, that no owner shall be entitled to exercise his right to maintain individual unit insurance in such a way as to decrease the amount which the Association may realize as trustee under any insurance policy obtained by reason of the provisions of this paragraph. In addition to the insurance coverage that the Board of Directors of the Association shall obtain as provided above, the Board of Directors shall obtain public liability insurance in such amounts and with such coverage as it may deem suitable under the circumstances and may obtain such other insurance as it shall determine from time to time to be desirable. All insurance premiums for any insurance coverage obtained by the Board of Directors shall be a common expense to be paid by assessments levied by the Association.

Q. That so long as said Grantor, its' successors and assigns, owns one or more of the family units established and described herein, said Grantor, its' successors and assigns shall be subject to the provisions of this Declaration and of Exhibits "A", "B", and "C" attached hereto; and that said Grantor covenants to take no action which would adversely affect the rights of the Association with respect to assurances against latent defects in the property or other right assigned to the Association, the members of such association and their successors in interest, as their interests may appear, by reason of the establishment of the condominium.

R. Grantor, its successors and assigns expressly reserves unto itself, its successors and assigns the right to unilaterally, without the consent or approval of any owners or the amendment of this Declaration, annex at any time and from time to time, to the plan of condominium ownership, which is the subject of this Declaration, all or any portion of the real estate described on Exhibit D appended hereto and to construct, either before or after annexation, additional units on such real estate as may be annexed. The units on any annexed real estate and their owners and any common areas and facilities thereon shall become subject to the provisions of this Declaration, the By-Laws of the Association, and such rules, regulations, decisions and resolutions as from time to time may be adopted by the Association in accordance with its By-Laws upon annexation becoming effective. The right of annexation herein created and reserved unto Grantor, its successors and assigns, shall be exercised by the recording of a supplement to this Declaration in the office of the Register of Deeds for Dane County, Wisconsin. The supplemental Declaration may, among other things, effectuate a change in (i) the percentage of undivided interest in the common areas and facilities owned by each of the unit space owners (ii) the proportionate shares in the profits and common expenses in the common areas and facilities of each of the unit space owners, and (iii) the proportionate representation for voting purposes in the Association of Owners of each of the unit space owners. The provisions contained herein and the recording of a supplemental declaration or declarations shall not be deemed an amendment of this Declaration within the meaning of Paragraph I (8) of this Declaration. The provisions contained in this paragraph shall in no way be construed so as to create any obligation on behalf of Grantor, its successors and assigns, to in fact effectuate any annexation.

S. The terms "Declaration" and "Condominium Ownership" as used herein shall mean and include the terms "Master Deed" and "Unit Ownership" respectively.

T. Service of process shall be made on Wm. Orenstein at 501 Barnard.....abt..
Hall..Madison..Wisconsin.....or upon such other person or persons and locations which may from time to time be designated by the Board of Directors of the East Bluff Owners Association.

U. The invalidity of any provision contained in this Declaration by judgment or court order shall in no way affect any other provision contained herein.

IN WITNESS WHEREOF, The Kohl Corporation has caused these presents to be signed by Herbert Kohl, its president, and countersigned by William Orenstein, its Assistant Secretary, and its corporate seal to be affixed this 15th day of December, 1970.